UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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| JOSE DEL-ORDEN, on behalf of himself and all others similarly situated, | : | Case No.: 16-cv-2361: |
| Plaintiff, | : | **DECLARATION** |
| -against- | : | |
| EATALY AMERICA, INC.., | : | |
| Defendant. | | |

**JOSEPH A.H. MCGOVERN,** pursuant to 28 U.S.C. § 1746, declares as follows:

1. I am a member of WILSON ELSER MOSKOWITZ EDELMAN & DICKER LLP, attorneys for defendant, EATALY AMERICA, INC. (hereinafter, "Eataly") in this matter.

2. I submit this Declaration in support of Eataly's motion to dismiss the complaint with prejudice pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedures, or in the alternative, for summary judgment pursuant to FRCP Rule 56.

3. The plaintiff filed his complaint on March 30, 2016. A copy of the plaintiff's complaint is attached as Exhibit "A".

4. The complaint asserts five causes of action. The first is for alleged violations of Title III of the Americans with Disabilities Act (42 U.S.C. §§ 12181, et seq) claiming that Eataly discriminates against people with disabilities in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation (*see,* Exhibit "A", at ¶¶ 54-69).

5. In his second cause of action, the plaintiff alleges that Eataly violated Section 296 of the New York State Executive Law which provides that it is an unlawful discriminatory practice for any person, being the owner, les*see,* proprietor, manager, superintendent, agent or employee of any place of public accommodation … because of the … disability of any person, directly or indirectly, to refuse, withhold from or deny to such person any of the accommodations, advantages, facilities or privileges thereof" (*see,* Exhibit "A", ¶¶ 70-84).

6. In his third cause of action, the plaintiff alleges that the defendants violated Article 4 of the New York State Civil Rights Law – which also prohibits discrimination in a place of public accommodation (*see,* Exhibit "A", at ¶ ¶ 85-97).

7. In his fourth cause of action, the plaintiff alleges violations of section 8 of the New York City Administrative Code – which also prohibits discrimination based on disability by the owner or operator of any place or provider of public accommodation (*see,* Exhibit "A", at ¶¶ 98-109).

8. In his fifth cause of action, the plaintiff seeks declaratory relief (*see,* Exhibit "A", at ¶¶ 110-112).

9. In his prayer for relief the plaintiff seeks the following:

(i) A preliminary and permanent injunction to prohibit Eataly from violating Title III of the Americans with Disabilities Act, New York Executive Law Section 296, et seq.; the New York City Administrative Code § 8-107 et seq; and the laws of New York;

(ii) A declaration that Eataly owns, maintains and/or operates its website, Eataly.com, in a manner which discriminates against the blind and which fails to provide access for persons with disabilities as required by the Americans with Disabilities Act,; New York Executive Law § 296, et seq.; New York City Administrative Code § 8-107, et seq., and the laws of New York;

(iii) An order certifying this case as a class action under Federal Rules of Civil Procedure 23(a) and (b)(b2) and/or (b)(3);

(iv) Compensatory damages in an amount to be determined by proof, including all applicable statutory damages and fines, to Plaintiff and the proposed class for violations of their civil rights under New York State Human Rights Law and City Law;

(v) Plaintiff's reasonable attorneys' fees, statutory damages, expenses, and costs of suit as provided by state and federal law; and,

(vi) Pre judgment and post judgment interest.

*See,* Exhibit "A", at ¶¶ 113-120.

10. Each of the plaintiff's five causes of action relies on the allegation that the defendant Eataly's website is a place of public accommodation.

11. Attached as Exhibit "B" is a true and accurate copy of Eataly's answer to the plaintiff's complaint.

12. In its answer, Eataly denied the plaintiff's allegations of statutory violations. Eataly also raised the appropriate affirmative defenses including that Eataly's website is not subject to the rules and regulations promulgated within the ADA as it is not a "place of public accommodation" (*see,* Exhibit "B", at ¶ 125); and that the complaint fails to state a claim upon which relief may be granted (Id., at ¶ 128).

13. I declare under penalty of perjury under the laws of the State of New York that the foregoing is true and correct.

Dated: White Plains, New York
March 22, 2017

Respectfully submitted,

**WILSON ELSER MOSKOWITZ EDELMAN & DICKER LLP**

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